



May 26, 2000

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2000-2095

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135635.

The City of Sachse (the "city"), which you represent, received a request for any and all records the Sachse Police Department has concerning three named individuals, and any and all reports, and/or videotapes regarding a specific arrest. You state that the city has released the front page information of all the incident reports responsive to this request.¹ You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

¹*Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (determining the types of information constituting front page information that must be released to the public)

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that the submitted information contains documents which are reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, these documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). We have marked the documents that we find to be confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Accordingly, you must not release these marked documents to the requestor.² Because we were able to make a determination under section 552.101 in conjunction with section 261.201 of the Family Code, we need not address your 552.101 and common law right to privacy claim.

Next, you are asserting that, except for the front page information that you have already released, the remaining information pertaining to Service Report Nos. 78314 and 78459 are excepted from public disclosure pursuant to section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on our review of the documents, we

²We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

conclude that the documents relating to Service Report Nos. 78314 and 78549 are excepted from public disclosure under section 552.108(a)(2) as the investigations concluded in a result other than conviction or deferred adjudication.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

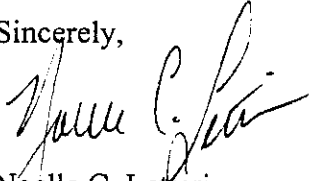
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³We note that Service Report No. 78314 contains personal information relating to the requestor. You have stated that you have released front page information to the requestor. We are unable to determine whether you have released the personal information as front page information. In this instant request, as the personal information concerns the requestor, the requestor has access to this information under section 552.023(a). See Gov't Code Section 552.023(a).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noelle C. Letteri', written over the printed name.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/nc

Ref: ID# 135635

Encl. Submitted documents

cc: Ms. Sonja Jackson
3215 Abbie Street
Sachse, Texas 75048
(w/o enclosures)